

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Communications Assistance for
Law Enforcement Act

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CC Docket No. 97-213

**REPLY COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION**

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The Personal Communications Industry Association ("PCIA"),¹ by its attorneys, hereby submits its reply to the comments filed on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.² As described in greater detail below, the record in this proceeding reveals widespread support for the Commission taking an aggressive role to ensure that the Communications Assistance for Law Enforcement Act ("CALEA") is implemented in a manner that reflects the economic and technical realities of the communications industry and the narrow focus intended by Congress. Only the Federal Bureau of Investigation/Law Enforcement ("FBI" or "Law Enforcement") argued against this approach, but, in doing so, they misconstrued the plain language of, and the clear policy concerns underlying CALEA.

¹ PCIA is the international trade association representing both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Notice of Proposed Rulemaking*, FCC 97-356 (rel. Oct. 10, 1997) ("Notice").

I. INTRODUCTION AND SUMMARY

Two themes run throughout virtually every comment submitted in this proceeding. First, commenters argue that the Commission's rules should reflect the business realities of the telecommunications industry as well as the technical limitations of currently available network equipment. Second, commenters note that the Commission's rules must ensure that CALEA is implemented in as narrow a manner as is possible in order to further Congress' intent to balance the equally important goals of protecting privacy and encouraging the development and deployment of new technologies.³

Consistent with the first theme, many commenters requested that the Commission confirm that the standard established for telecommunications equipment by the Telecommunications Industry Association fulfills CALEA's requirements. Further, virtually every commenter urged the Commission to extend the assistance capability compliance deadline for two years. Until CALEA-compliant equipment becomes commercially available, commenters generally agreed that it is impossible for the industry to meet the current deadline. Not surprisingly, the FBI was the only commenter to oppose this concept; however, the FBI is the precise party delaying the development of commercially available compliant equipment by protesting the interim standards. Because of this delay, it is imperative for the Commission to heed the call of many commenters and extend the funding cutoff deadline until CALEA-compliant equipment is commercially available.

³ H.R. Rep. No. 103-827, at 13 (1994), *reprinted in*, 1994 U.S.C.C.A.N. 3489, 3493.

PCIA agrees with commenters that the Commission should adopt a program of self-certification in its CALEA regulatory regime in order to reflect business realities. Many commenters noted that self-certification serves the public interest because it is more efficient and less costly than other proposed certification alternatives. Further, the record makes clear that the implementation of a self-certification regime will not compromise the law enforcement goals of CALEA.

As numerous parties stressed, the Commission must guard against FBI/Law Enforcement's attempts to enforce an overbroad interpretation of CALEA's surveillance authority that encompasses services that the legislation was never intended to cover. For example, despite the FBI's reading of CALEA to the contrary, the Commission must clarify that information services offered by *any carrier* are exempt from CALEA and that physical location information is not part of the "call-identifying information" required of CMRS carriers. Permitting the FBI to shoehorn these services into CALEA would disrupt the delicate balance between privacy and monitoring Congress fashioned in drafting this legislation.

Finally, PCIA agrees with commenters that the Commission must take into account the technological and business realities of paging companies, resellers, and dispatch-type carriers. Specifically, as commenters pointed out, the unique characteristics of these services should dictate whether CALEA requirements should be imposed on these types of carriers, and if they are imposed, the precise nature of the requirements.

The record in this proceeding and the language of CALEA argues strongly in favor of the Commission implementing CALEA in a manner that will not force carriers to make drastic departures from their normal business practices or meet deadlines that are technically infeasible. By extending the implementation and funding cutoff deadlines, allowing for carrier self-

certification, and ensuring that CALEA only applies to a narrow class of services and carriers, the Commission can promulgate a regulatory regime that is consistent with CALEA's terms and the concerns of the telecommunications industry, but still serves the needs of law enforcement agencies.

II. THERE WAS BROAD CONSENSUS THAT THE COMMISSION SHOULD CONFIRM THAT TIA'S EQUIPMENT STANDARD SATISFIES CALEA'S REQUIREMENTS

PCIA agrees with those commenters that encourage the Commission to resolve the still pending petition filed last July by the Cellular Telecommunications Industry Association ("CTIA"). In this Petition, CTIA asked the Commission to confirm that the standards the industry was developing fully implement CALEA's assistance capability requirements, thereby rendering the FBI's "technical deficiency" argument moot.⁴ The time is ripe for the Commission to exercise its statutory duty to resolve the dispute between the industry and the FBI as to the specific capabilities that CALEA requires the industry to provide law enforcement, and, as CTIA has requested, confirm that the industry standard adopted by the Telecommunications Industry Association ("TIA") fully satisfies CALEA's assistance capability requirements.

The FBI appears to imply that unless the industry adopts the FBI's proposed capability requirements, the use of the industry's proposed standard is insufficient to invoke the protection of CALEA's Section 107(a)(2) safe harbor provision.⁵ PCIA reminds the Commission, however,

⁴ See Bell Atlantic Mobile, Inc. ("BAM") Comments at 8-9; BellSouth ("BellSouth") Corp. Comments at 15-16; AirTouch Communications, Inc. ("AirTouch") Comments at 13-15 (citing "Implementation of Section 103 of the Communications Assistance for Law Enforcement Act," Petition for Rulemaking of the Cellular Telecommunications Industry Association (filed July 16, 1997)).

⁵ 47 U.S.C. § 1006(a)(2).

that Congress clearly intended that CALEA accommodate not only the needs of law enforcement, but also the legitimate privacy interests of consumers and the technical and financial realities facing telecommunications carriers. In this regard, the Commission was given a very specific role to play in CALEA implementation as the entity responsible for reviewing and processing extension requests,⁶ and as the ultimate arbiter of technical standards.⁷ With this grant of authority, Congress gave the Commission a lead role to play in the standards setting process — authority that PCIA urges the Commission to exercise as soon as possible.

III. VIRTUALLY ALL COMMENTERS AGREED THAT AN EXTENSION OF THE COMPLIANCE DATE FOR THE ASSISTANCE CAPABILITY REQUIREMENTS AND A COMMENSURATE ADJUSTMENT IN THE FUNDING CUTOFF ARE WARRANTED

Nearly every one of the commenters that would actually be required to develop or deploy CALEA-compliant equipment urged the Commission to exercise its authority under Section 107(c) and extend the deadline for compliance with Section 103's assistance capability requirements for two years.⁸ For example, several different trade associations representing hundreds of affected parties, including PCIA, noted that their members would be forced to request extensions if the Commission fails to exercise its authority and postpone the deadline for

⁶ 47 U.S.C. § 1006(c).

⁷ 47 U.S.C. § 1006(b).

⁸ See, e.g., 360° Communications Company ("360°") Comments at 7-8; BAM Comments at 8-9; American Civil Liberties Union, Electronic Privacy Information Center, & Electronic Frontier Foundation ("ACLU, *et al.*") Comments at 1; BellSouth Comments at 18-19; Motorola, Inc. ("Motorola") Comments at 11; Paging Network, Inc. ("PageNet") Comments at 13-14; United States Cellular Corp. Comments at 1-3.

two years.⁹ Under these circumstances, it is clear that the Commission will receive numerous, duplicative requests for extensions if it does not act promptly.

As pointed out by the Telecommunications Industry Association, the current deadline of October 25, 1998 is impossible to meet because manufacturers are unable to develop, design, and construct CALEA-compliant equipment for lack of standards regarding precisely what assistance capabilities are required by CALEA.¹⁰ Although interim standards were recently adopted by the industry, the FBI has challenged them thereby casting their viability in doubt. Without certainty to what the appropriate standard is, manufacturers are obviously reluctant to begin producing compliant equipment.¹¹ The current deadline is only eight months away, but, according to TIA, “the development process alone requires at least 24 months.”¹² Thus, even if the dispute between the FBI and the industry were to be resolved today, TIA concludes that the hardware and software needed to satisfy that standard “could not be finished, in development and released until, *at the earliest*, December 1999.”¹³ In the light of this fact, if the Commission does not act now, it will be faced with a deluge of duplicative extension requests. The prudent course for the FCC is to extend the compliance deadline until October 24, 2000.

⁹ Cellular Telephone Industry Assn (“CTIA”) Comments at 7-8; Rural Telecommunications Group (“RTG”) Comments at 7; Telecommunications Industry Assn (“TIA”) Comments at 11; United States Telephone Assn (“USTA”) Comments at 10-11; Organization for the Promotion & Advancement of Small Telecommunications Cos. (“OPASTCO”) Comments at 7; American Mobile Telecommunications Assn, Inc. (“AMTA”) Comments at 8.

¹⁰ TIA Comments at 10-11.

¹¹ TIA Comments at 10; Motorola Comments at 9-11.

¹² TIA Comments at 10.

¹³ *Id.* at 9-10. Even this date is ambitious because it does not include the time needed to field test the equipment under actual market conditions. *See id.* at 10.

The only party directly opposed to this course of action, Law Enforcement, is the one party that does not have to deploy the systems and, as a result, is less than familiar with the problems the industry faces. Further, as the ACLU observed, Law Enforcement is its own biggest enemy when it comes to meeting the current compliance date because it is the *only* party challenging the interim standard.¹⁴ Instead of a blanket extension, the FBI's "solution" to the impossible situation posed by the development, manufacture, deployment problem is for the Commission to consider this factor when it reviews the hundreds of individual extension requests it will undoubtedly receive.¹⁵ Because the FBI's proposal forces carriers and the FCC to expend valuable resources in a duplicative and wasteful fashion, it should be rejected.

The lack of commercially available CALEA-compliant equipment also supports an extension of the funding cutoff deadline until such equipment does become commercially available. As BAM and others note, the January 1, 1995 funding cutoff date in CALEA was based on the assumption that capability standards would be adopted soon after CALEA was enacted in October 1994, allowing carriers to purchase compliant equipment as they upgraded their systems.¹⁶ That assumption has turned out to be entirely incorrect. For example, BAM has been upgrading its network to provide digital cellular service, but, without a standard, it has not

¹⁴ ACLU, *et al.* Comments at 1.

¹⁵ Federal Bureau of Investigation ("FBI") Comments at 41.

¹⁶ BAM Comments at 10; *see also* OPASTCO Comments at 5.

been able to buy compliant equipment.¹⁷ Like other carriers, BAM is now facing the prospect, entirely unintended by Congress, of spending huge sums of money to retrofit its network.¹⁸

PCIA also agrees with the commenters that the Commission can help alleviate this problem by considering the availability of compliant equipment as a factor in the Section 109 “reasonably achievable” test.¹⁹ As the record amply shows, considering this factor is fully within the Commission’s Section 109 authority. Moreover, consideration of whether equipment is available would permit the Commission to address the negative consequences of requiring carriers to pay for retrofitting newly upgraded networks, and the detrimental effects of such a retrofit on competition and consumer welfare.²⁰

Finally, the FBI proposes that carriers include, in their Section 109 petitions to the Commission, a dollar amount estimate of the costs directly associated with the modifications under consideration.²¹ The FBI also asserts that the “effect of compliance on public safety and national security should be deemed to be the paramount consideration in the FCC’s determination of reasonableness.”²² There are two fundamental problems with these positions.

First, it will be virtually impossible for carriers to provide a “reliable dollar amount”

¹⁷ See BAM Comments at 11.

¹⁸ See *id.*; see also OPASTCO Comments at 6 (noting that this problem is especially acute for small and rural carriers).

¹⁹ See, e.g., BAM Comments at 12; CTIA Comments at 12; OPASTCO Comments at 6; U.S. West, Inc. (“U.S. West”) Comments at 40-42.

²⁰ See BAM Comments at 12; BellSouth Comments at 17-18; US West Comments at 41.

²¹ FBI Comments at 40-41.

²² *Id.* at 41.

estimate of the costs directly associated with the equipment modifications required to comply with CALEA because CALEA compliance standards and equipment are not yet available. Second, the FBI has simply misinterpreted CALEA with respect to the priority different factors are to be given under the reasonableness standard. Section 109 requires that the Commission consider a number of *other* factors, including “the provision of new technologies and services” and the “financial resources of the telecommunications carrier.”²³ The statute does not prioritize one factor over another; rather it specifically requires the Commission to balance all of the relevant factors.

IV. THE FCC MUST GUARD AGAINST AN OVERBROAD INTERPRETATION OF THE ASSISTANCE CAPABILITY REQUIREMENTS

PCIA agrees with commenters that the FCC must guard against an overly expansive interpretation of the assistance capability requirements. As several commenters observed, the plain language of Section 103 of CALEA illustrates that Congress intended CALEA to preserve the *status quo* regarding electronic surveillance capabilities.²⁴ Thus, CALEA was not enacted to expand the ability of law enforcement agencies to engage in new types of electronic surveillance, but merely to allow its traditional surveillance capabilities to be maintained in the new, all digital environment.

²³ 47 U.S.C. § 1008(b).

²⁴ See, e.g., AirTouch Comments at 10; BellSouth Comments at 7; Sprint Spectrum, L.P. (“Sprint PCS”) Comments at 3-4; ACLU, *et al.* Comments at 10; USTA Comments at 9. See also H.R. Rep. 103-827 at 22-23; 1994 U.S.C.C.A.N. at 3502-3503.

The record further reflects that the interim standard proposed by TIA satisfies the limited requirements of CALEA.²⁵ Law Enforcement has, however, derailed the standards process by attempting to force the industry to provide surveillance features that go beyond the assistance capability requirements of Section 103.²⁶ Not only are these actions contrary to Congress' intent, they are beyond law enforcement agencies' statutorily mandated consulting role in the standards process.²⁷ In fact, law enforcement agencies cannot require a specific system design, nor can they prohibit the adoption of any technologies.²⁸ Instead, it is the industry that is to play the key role in establishing the standards,²⁹ and industry already has adopted an interim standard. Thus, the Commission should break the log jam created by the FBI's position and heed the call of the telecommunications industry to adopt TIA's interim standard as the CALEA standard.³⁰

One example of the FBI/Law Enforcement's overbroad interpretation of CALEA that has stalled the standard-setting process concerns location information. The FBI argues that wireless carriers are obligated to deploy the capacity to obtain any information that might be theoretically covered by a surveillance request, including physical location information, simply because such

²⁵ See CTIA Comments at 3-4; USTA Comments at 9; RTG Comments at 5. In fact, according to the ACLU, the proposed interim standards go well beyond the standards required by CALEA. See ACLU, *et al.* Comments at 9-10.

²⁶ See Sprint PCS Comments at 4; ACLU, *et al.* Comments at 9; Center for Democracy and Technology, The Electronic Frontier Foundation, & Computer Professionals for Social Responsibility ("CDT/EFF") Comments at 4; USTA Comments at 10; CTIA Comments at 3-4.

²⁷ See USTA Comments at 9; CDT/EFF Comments at 6-7.

²⁸ 47 U.S.C. § 1002(b)(1)(A). See also H. Rep. No. 103-827, at 19; 1994 U.S.C.C.A.N. at 3499.

²⁹ *Id.*; 1994 U.S.C.C.A.N. at 3499.

³⁰ See, e.g., USTA Comments at 10-11; BellSouth Comments at 16; Primeco PCS, Inc. at 3-4.

information would be covered in a court order.³¹ This position simply is untenable because CALEA clearly limits the carriers' obligations to that of providing "call-identifying information."³² When it discussed this term, Congress specifically stated that carriers are not required to provide physical location information if it "is not reasonably available."³³ Further, despite the FBI's insistence to the contrary, Congress stated that a "carrier does not have to modify its system to make [location information] available."³⁴ Under the FCC's E911 rules, wireless carriers do not have physical location information capability at this time, nor will such information be "reasonably available" until E911 automatic location identification ("ALI") requirements are effective, capabilities are requested by the local public safety answering point, and funding mechanisms put in place. Mandating the provision of ALI within CALEA would thus eviscerate the Commission's regulatory scheme for E911.

V. THE RECORD REFLECTS THAT SELF-CERTIFICATION OF CARRIER COMPLIANCE IS IN THE PUBLIC INTEREST AND PERMISSIBLE UNDER CALEA

Several commenters have pointed out the many public interest benefits to be gained through the Commission's proposed self-certification regime for both large and small carriers.³⁵

³¹ See FBI Comments at 37 n.32; ACLU, *et al.* Comments at 9.

³² See 47 U.S.C. § 1002(a)(2)

³³ 47 U.S.C. § 1002(a)(2). See also H.R. Rep. No. 103-827, at 22; 1994 U.S.C.C.A.N. at 3502. In fact, under specific types of orders issued pursuant to 18 U.S.C. § 3127 (pen-registers, trap and trace), such location information *cannot* be released to the law enforcement agency.

³⁴ H.R. Rep. No. 103-827, at 22; 1994 U.S.C.C.A.N. at 3502.

³⁵ See, e.g., 360° Comments at 5-7; AirTouch Comments at 25; National Telephone Cooperative Assoc. ("NTCA") Comments at 4; OPASTCO Comments at 2; PageNet Comments at 10-11; RTG Comments at 2-3; Teleport Communications Group ("TCG") Comments at 8-9; USTA Comments at 8; US West Comments at 33-34.

As PageNet observed, a self-certification regime is cheaper and more efficient because the Commission is freed from processing and reviewing the hundreds of compliance filings it would receive, and the carriers would save the costs associated with the preparation and prosecution of these filings.³⁶ As a result, carriers, regardless of their size, can devote more resources to actually implementing CALEA rather than filling out forms and making filings.

The FBI stands alone in its opposition to any type of a self-certification regime, arguing that such a regime would be “unworkable” and would impose “an even greater burden on carriers and the Commission” because carriers would fail to implement CALEA as required without a formal compliance process.³⁷ Critically, this position ignores the fact that self-certification has proven quite successful in other contexts. For example, some commenters pointed to the Commission’s self-certification rules regarding RF emissions requirements³⁸ and 360° Communications lists several other instances where the Commission has used a “presumption of compliance” in the context of its rules regarding the local zoning regulation of satellite earth stations, AM broadcast emission limits, and access to services by people with disabilities.³⁹

³⁶ PageNet Comments at 10.

³⁷ FBI Comments at 33. Although the FBI bases its opposition to a self-certification program on its professed concern about over-burdening carriers, it then proposes recordkeeping alternatives that are overwhelmingly burdensome and clearly unnecessary, given the history of cooperation between law enforcement and the telecommunications industry. The FBI’s suggestions regarding non-designated employees, personnel records, the creation of records, access to records, safeguards for employee integrity, and the creation of lists of designated employees are clearly unwarranted and should not be adopted. *See* FBI Comments at 24-27. Further, PCIA agrees with AirTouch Communications and PrimeCo that a per-intercept affidavit would be unnecessarily burdensome. AirTouch Comments at 20-21; PrimeCo Comments at 7.

³⁸ *See* AirTouch Comments at 26; PageNet Comments at 11.

³⁹ *See* 360° Comments at 6.

It is widely recognized that the FCC has the statutory discretion to rely on a self-certification regime⁴⁰ in that, under 47 U.S.C. § 229(a), the Commission enjoys the flexibility to promulgate whatever rules are “necessary to implement the requirements of [CALEA].” Self-certification is in the public interest for both large and small carriers, and, as has been proven in other contexts, would not hinder the successful implementation of CALEA.

Finally, as noted in PCIA’s original comments, the Commission could enhance its self-certification regime by permitting carriers to check the criminal records of their security personnel by submitting the fingerprints of these personnel to law enforcement officials.⁴¹ On this point, there is agreement between the carriers and Law Enforcement, as the FBI supports a policy under which carriers could conduct background checks on employees with access to sensitive surveillance information.⁴²

VI. THE EXEMPTION FOR INFORMATION SERVICES PRESERVES THE NARROW SCOPE OF CALEA

As recognized by a wide variety of commenters, the plain language and the legislative history of CALEA specifically exempts information services from the requirements of CALEA.⁴³ Further, nowhere in the language or legislative history of CALEA is the exemption predicated on whether or not the information services provider also offers telecommunications services covered

⁴⁰ See note 35, *supra*.

⁴¹ See PCIA Comments at 12.

⁴² FBI Comments at 19.

⁴³ See, e.g., Ameritech Operating Cos. (“Ameritech”) Comments at 2-3; AT&T Corp. (“AT&T”) Comments at 40; CTIA Comments at 24-25; Motorola Comments at 3-5; NTCA Comments at 2; PageNet Comments at 3-5; USTA Comments at 5.

by CALEA.⁴⁴ As one commenter explains, the nature of the exemption is not “*based on the carrier offering the services, but on the nature of the services* and a recognition that content of communications has always been accorded greater protections.”⁴⁵ Thus, as AT&T succinctly concludes, “the CALEA exemption is not limited by its terms to those entities that ‘exclusively’ provide such services.”⁴⁶

Once again, Law Enforcement clouds the record in its drive to expand the coverage of CALEA into areas Congress specifically excluded from its coverage. The FBI wants “any portion of a telecommunications service provided by a common carrier that is used to provide transport and termination to information services” to be subject to CALEA’s requirements.⁴⁷ The approach advanced by the FBI might eviscerate the information services exemption if not strictly limited to its terms. Specifically, the FCC must ensure that any time an information service (*e.g.*, electronic mail, voice mail, Internet access) uses any portion of a covered carrier’s system, the underlying information service itself is not subject to interception under CALEA. In other words, Law Enforcement should not have access to greater content merely because a carrier is transmitting communications that are information services and because that carrier is separately providing the information service.

Due to the nature of the communications network — where virtually all information services use the transportation and termination services of telecommunications carriers — any

⁴⁴ See 47 U.S.C. § 1002(b)(2); *see also* AT&T Comments at 39-40; Ameritech Comments at 2; CDT/EFF Comments at 21.

⁴⁵ ACLU, *et al.* Comments at 11 (emphasis added).

⁴⁶ AT&T Comments at 40.

⁴⁷ FBI Comments at 14.

broader interpretation of CALEA's telecommunications carrier obligations would sweep information services within its terms. Further, if read too broadly, the Law Enforcement approach would put covered carriers that provide information services at a competitive disadvantage relative to pure information services providers due to the costs of CALEA compliance.⁴⁸ Finally, this approach might hinder the further development of information services technology — something Congress explicitly sought to avoid.⁴⁹

VII. THE UNIQUE POSITION OF DIFFERENT CARRIERS MUST BE CONSIDERED IN THE COMMISSION'S IMPLEMENTATION DECISIONS

A. The Unique Nature of Paging Networks Should Be Taken Into Account in the Assistance Capability Requirements

The FCC should take the unique technologies deployed by paging providers into account when it reviews the assistance capability requirements for messaging services. Specifically, the one-way paging industry already provides law enforcement agencies with “call-identifying information” by providing these agencies with a “clone” pager upon receipt of a valid court order. This “clone” permits law enforcement officials to receive pages simultaneously with the paging customer. As one commenter concludes, this “current practice of providing a ‘clone’ pager meets both law enforcement’s needs and CALEA’s capability requirements.”⁵⁰ Further, it would be technically difficult for paging carriers to provide assistance to law enforcement agencies beyond what they provide today.⁵¹ For example, in order to provide the number of a

⁴⁸ CDT/EFF Comments at 21-22.

⁴⁹ CTIA Comments at 25.

⁵⁰ AirTouch Comments at 17.

⁵¹ *Id.* at 18 n.46.

calling party, paging carriers would be required to change the manner in which they interconnect with local exchange carriers, an extremely resource intensive proposition.⁵² Thus, the Commission should find that one-way paging carriers already comply with CALEA through the use of clone pagers and be cautious in imposing additional law enforcement-related obligations on such carriers.

B. Most Commenters Agree That Resellers Should Be Subject to CALEA's Requirements to the Extent Necessary to Carry Out the Statute's Purposes

A wide variety of commenters, including FBI/Law Enforcement, agree that resellers should be subject to CALEA's requirements.⁵³ Many commenters point out that resellers very often are the only parties that have access to key "call-identifying information" that CALEA requires, including customer identifying information and billing information.⁵⁴ However, resellers should be subject to the requirements of CALEA only to the extent required by the statute, not, as the FBI argues, "accountable to assist Law Enforcement in *any way technically feasible*."⁵⁵ Rather, the rules should be tailored to the unique position of resellers. For example, one commenter suggests that the rules should not require a reseller to obtain information that is

⁵² See *id.*

⁵³ See, e.g., Ameritech Comments at 2; BAM Comments at 3; FBI Comments at 13; GTE Corp. Comments at 4-5; Omnipoint Communications, Inc. ("Omnipoint") Comments at 7; PageNet Comments at 5-6; USTA Comments at 3-5.

⁵⁴ See SBC Communications Inc. Comments at 6; *see also* Omnipoint Comments at 7; BellSouth Comments at 6.

⁵⁵ FBI Comments at 13 (emphasis added).

in the control of another carrier. Instead, under such circumstances, law enforcement agencies should be required to seek out the correct carrier for the information required.⁵⁶

C. The Record Shows That CALEA's Requirements Cannot Be Applied to SMR and Dispatch-Type Wireless Carriers

Law Enforcement argues that any carrier that offers any portion of its services to the public for hire should be covered by CALEA.⁵⁷ Yet, the record clearly shows that CALEA's requirements cannot be applied to some types of carriers, specifically dispatch-type SMR service providers. Commenters point out that the current system design (lack of switching, many radios using the same channels, etc.) of these services simply cannot generate the "call-identifying information" required by law enforcement agencies.⁵⁸ Further, because there is no technology on the horizon that would permit these systems to become CALEA-complaint, equipment and systems would require ground-up redesign and construction.⁵⁹

In addition to the technical issues, there is no demonstrated need for these systems to be included in CALEA. As Nextel points out, law enforcement officials have shown little interest in intercepting such communications and speculates that it might be due to the "minimal security and privacy expectations" of such systems.⁶⁰ Southern Communications observes that dispatch-

⁵⁶ See PageNet Comments at 6.

⁵⁷ See FBI Comments at 13-14.

⁵⁸ See AMTA Comments at 4; Motorola Comments at 7; Nextel Communications, Inc. ("Nextel") Comments at 8.

⁵⁹ Nextel Comments at 9, 11; AMTA Comments at 5.

⁶⁰ Nextel Comments at 8.

oriented SMR services “are unlikely conduits for criminal activity” because they serve a specialized market with a finite number of users.⁶¹

The Commission has recognized that different services can be regulated differently.⁶² The situation that the Commission faces here, a group of services with limited interconnection without intelligent switching, is similar to the situation it faced in the E911 proceeding.⁶³ Thus, as many commenters note, it would be especially appropriate to apply the same definition to dispatch-type SMR providers in CALEA that is applied in E911.⁶⁴ Because the Commission has the authority to exclude from CALEA any “class or category of telecommunications carriers,”⁶⁵ and the record supports excluding dispatch-type services from CALEA, the Commission should act accordingly.

VIII. CONCLUSION

The record in this proceeding clearly supports a policy of incorporating business and technical realities into the implementation of CALEA. Such an approach would fulfill the intent of Congress when it enacted CALEA — to preserve the current capabilities of law enforcement agencies while protecting privacy and encouraging the development and deployment of new

⁶¹ Southern Communications Services, Inc. (“Southern”) Comments at 4.

⁶² See, e.g., *Interconnection and Resale Obligations to Commercial Mobile Radio Services*, 11 FCC Rcd 18455 (1996) (First Report & Order) (excluding some CMRS providers from resale obligations); *Telephone Number Portability*, 11 FCC Rcd 8352, 8433 (1996) (First Report & Order) (excluding certain classes of CMRS providers from number portability rules).

⁶³ See Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102 (*Memorandum Opinion and Order*), FCC 97-402, at ¶¶ 75-78 (rel. Dec. 23, 1997).

⁶⁴ See AMTA Comments at 6; Nextel Comments at 10; Motorola Comments at 7.

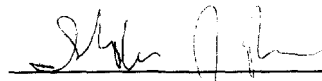
⁶⁵ 47 U.S.C. § 1001(8); see also Southern Comments at 3.

technologies. Consistent with this approach, the Commission should extend the compliance deadline for two years, support the industry's struggle against Law Enforcement's attempt to expand CALEA, permit self-certification, and recognize the unique needs of different services in CALEA's implementation.


Respectfully submitted,

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